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UNITED NATIONS CONFERENCE ON SUCCESSION OF STATES IN RESPECT OF TREATIES

Resumed session

PROVISIONAL SUMMARY RECORD OF THE FIFTEENTH MEETING

held at the Neue Hofburg, Vienna,
on Tuesday, 22 August 1978, at 3.30 p.m.

President: Mr. ZEMANEK (Austria)

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N.B. Participants wishing to have corrections to this provisional summary record incorporated in the final record of the meeting are requested to submit them in writing, preferably on a copy of the record itself, to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva, as soon as possible and not later than 30 September 1978.

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TRIBUTE TO THE MEMORY OF MR. JOMO KENYATTA, PRESIDENT OF KENYA (continued)

The PRESIDENT invited the Chairmen of the various regional groups to pay a tribute to the memory of Mr. Jomo Kenyatta, President of Kenya.

Mr. YACOUBA (Niger), speaking on behalf of the African Group, expressed the condolences of the African Group to the delegation of Kenya and, through it, to the Government and people of Kenya on the occasion of the death of the great African leader, Jomo Kenyatta. For the African States, he had been the symbol of the struggle for independence, since he had been one of the first sons of Africa to dare to tackle a situation inimical to the interests of the African States. He had also been a symbol because, as a result of his effective and dynamic leadership, Kenya had the privilege of being one of the most stable countries in Africa. All those who belonged to the African Group had been deeply affected by his death, for he had been a great man with whom they would like to identify.

Mr. GUTIERREZ EVIA (Mexico), speaking on behalf of the Latin American Group, expressed the deep sense of sorrow felt by the Latin American Group on the announcement of the death of President Kenyatta, who had been an eminent head of State, a great African leader and a man of world stature. With his patriotism, extensive knowledge, determination, understanding and good nature, he had worked untiringly for the well-being and development not only of his own people, but also of all those aspiring to freedom and independence. The maintenance of peace had been his main objective throughout his fruitful life.

Mrs. SLAMOVA (Czechoslovakia), speaking on behalf of the Group of Eastern European States, associated herself with the condolences presented to the delegation of Kenya on the occasion of the death of the great politician, President Kenyatta. Through the President of the Conference, she requested the delegation of Kenya to convey the condolences of the Group of Eastern European States to the people and Government of Kenya. In Eastern Europe, President Kenyatta would be remembered as one who had fought hard for the people of his country and for the peoples of the other African countries as well.

Sir Ian SINCLAIR (United Kingdom), speaking on behalf of the Group of Western European and Other States, said that, with the death of Mr. Jomo Kenyatta, Africa and, indeed, the entire world, had lost a great statesman whose influence had extended far beyond Kenya and Africa. It could be said that, by his courage, firmness, understanding and wisdom, he had forged a nation. For his own people, he had been a patriarch and, for other peoples, he had symbolized Africa.

The Group of Western European and Other States expressed its deepest sympathy to the Kenyan delegation and, through it, to the people and Government of Kenya and to all the other African delegations.

Mr. BRECKENRIDGE (Sri Lanka), speaking on behalf of the Group of Non-Aligned Countries, said it had been with great sorrow that those countries had learned of the death of President Kenyatta. They would remember with pride the way in which he had led his people and the place which he had occupied in the community of nations. The Group of Non-Aligned Countries expressed its condolences to the delegation of Kenya, and, through it, to the Government and people of Kenya.

The PRESIDENT requested the delegation of Kenya to convey to the people and Government of Kenya the condolences expressed during the proceedings.

Mr. MUDHO (Kenya) thanked the Conference for the moving tribute it had paid to the memory of the first President and founder of the Republic of Kenya. He would convey the condolences of the various regional groups to Mr. Kenyatta's family and to the people and Government of Kenya.

All Kenyans were now mourning the sudden passing away of a man who had spent his entire adult life in the service of his people, his country and all mankind, who were the beneficiaries of his great vision and spirit of sacrifice. Despite everything he had done for Kenya and everything he had given to it, all he had asked of his countrymen in return was that they should love one another and learn to cherish peace, progress and stability. He had exhorted every Kenyan to be proud of his country and to forgive, but not forget, the past, an appeal to which there had been a broad response. He had enjoyed the admiration, affection and respect of every Kenyan. He (Mr. Mudho) expressed the hope that what President Kenyatta had always wanted for his country - namely, continued peace, prosperity and stability in a strong and united State from which discrimination was absent, in the true spirit of the motto which President Kenyatta had given his country: "Harambee" - would be realized.

The meeting was suspended at 3.45 p.m. and resumed at 3.55 p.m.

ADOPTION OF A CONVENTION AND OTHER INSTRUMENTS DEEMED APPROPRIATE AND OF THE FINAL ACT OF THE CONFERENCE (item 12 of the agenda) (continued)

Adoption of the Convention as a whole

The PRESIDENT invited representatives who wished to do so to make general statements on the Convention adopted at the preceding meeting or to explain their votes.

Mr. PEREZ CHIRIBOGA (Venezuela) said that his delegation had voted in favour of the Convention as a whole, for it marked an important stage in the development of public international law. His Government would still have to decide, at the appropriate time, whether it could sign the Convention.

His delegation had been able to vote in favour of the Convention because of the existence of draft article 13, entitled "Questions relating to the validity of a treaty", and because of the International Law Commission's interpretation of article 11, relating to boundary régimes. In paragraph 20 of the commentary to that article, the International Law Commission had stated, with regard to its formulation, that: "In accepting this formulation the Commission underlined the purely negative character of the rule, which goes no further than to deny that any succession of States simply by reason of its occurrence affects a boundary established by a treaty or a boundary régime so established. As already pointed out it leaves untouched any legal ground that may exist for challenging the boundary, such as self-determination or the invalidity of the treaty, just as it also leaves untouched any legal ground of defence to such a challenge. The Commission was also agreed that this negative rule must apply equally to any boundary régime established by a treaty, whether the same treaty as established the boundary or a separate treaty."

Without article 13 and that interpretation of article 11, which left aside any such legal grounds that might exist for challenging a boundary, such as the invalidity of the treaty or of an arbitral award, his delegation would not have been able to vote in favour of the Convention.

Mr. HERNDL (Austria) welcomed the fact that the Conference had adopted, virtually unanimously, another Convention with which Vienna's name would be associated. Apart from some minor amendments, the text adopted was basically the same as the draft of the International Law Commission; that was proof of the

high quality of the Commission's work. It was now time to look to the future, to try to forget the questions of colonialism and imperialism raised during the discussions and to seek to apply the Convention effectively.

The International Law Commission had rightly given priority to recent practice, which was particularly abundant on the subject and which tended towards the reversal of older practice. The Convention clearly showed the relationship between the "clean slate" rule and the principle of continuity. The application of that rule was justified in the case of newly independent States because of the often difficult circumstances in which they had attained independence. Now that the process of decolonization was nearing its end, it was the principle of continuity, as embodied in the Convention, that would henceforth apply to States, in accordance with the two basic principles underlying the Convention and general international law, namely, the principle of pacta sunt servanda and the principle of good faith.

Although it had voted in favour of the Convention, his delegation was not entirely satisfied with all its provisions and, in particular, those to which it had submitted amendments. For example, it would have preferred account to be taken, in article 19, of the amendment it had submitted concerning the further reservations which a newly independent State coulf formulate to a multilateral treaty.

His delegation welcomed the outcome of the discussion of the issue of the settlement of disputes, despite the fact that the ideal solution - the compulsory judicial settlement of disputes - had not been adopted. The Convention nevertheless contained a mechanism for the settlement of disputes that was stricter than that of other Conventions; there was thus reason to hope that the international community was moving towards the compulsory judicial settlement of disputes.

His delegation had declared its support for the principle of permanent sovereignty over natural resources and had therefore voted in favour of article 12 bis, for it was convinced that States must have full sovereignty over their natural resources. At one point in its history, Austria had had to pay dearly to recover its sovereignty over its natural resources. Article 12 bis had the merit of treating the principle of permanent sovereignty over natural resources as an element of international law.

Mr. FONT-BLAZQUEZ (Spain) welcomed the fact that, owing to its perseverence, the Conference had succeeded in adopting the text of the Convention on Succession of States in respect of Treaties. The difficulties experienced by his delegation related solely to articles 30 and 33. Article 30 would probably create more difficulties than it would solve. The position of his delegation with regard to article 33 was reflected in the summary records of the relevant meetings. Without prejudice to the position of the Spanish Government with respect to the signature and ratification of the Convention, his delegation could have voted without hesitation in favour of the Convention, while explaining its objections to articles 30 and 33; in the event, however, it had finally received instructions to vote for its adoption.

Mr. RITTER (Switzerland) said that, although his delegation had been obliged to abstain in the vote on the Convention as a whole, no dramatic significance should be attached to its decision to do so. The value of the work done by the International Law Commission and the Conference should not be underestimated. In that respect, he referred to a constructive provision, namely, article 7, which allowed for greater flexibility in the application of the Convention. Articles 12 and 12 bis made the Convention acceptable to a large number of delegations. For his own delegation, the main problem, which had compelled it to abstain in the vote, lay in article 33. The International Law Commission, in its commentary to article 33, had shown that the "clean slate" rule dominated the practice of public international law, but had proposed a deviation from that rule in the case of new States other than newly independent States. The Conference had followed the Commission's suggestion in that regard, but, in doing so, it had introduced a twofold duality into contemporary international law: on the one hand, newly independent States were distinguished from other new States and on the other hand, in the case of a new State, general international law was distinguished from the law laid down in the Convention.

It was normal for a codification conference to adopt rules that departed from public international law, but the present Convention departed from precedent: although, in earlier codification conventions, States had adopted new rules which they then applied to themselves, the present Conference had taken decisions which would affect the future of States that did not yet exist. His delegation

entertained doubts concerning the possibilities of applying article 33 in practice. Either the new State would not ratify the Convention and would apply general international law, and hence solutions that ran counter to those envisaged in the Convention, or it would ratify the Convention and style itself a newly independent State. As there were no criteria for distinguishing newly independent States from other new States, there would be nothing to prevent new States from acting in that manner, even though the Conference had deleted from the draft the virtually explicit invitation to States, made in paragraph 3 of article 33, to take such action.

It might also happen that a new State which had ratified the Convention subsequently realized that it would prefer not to apply the rule of continuity in certain cases. It could then plead that, during the period which had elapsed between its attainment of independence and ratification of the Convention, it had applied general international law terminating the application of the treaties of the predecessor State, and that the Convention could not re-establish the rule of continuity with retroactive effect. In other words, the sole foundation for the principle of continuity was the consent of States, and it would have been preferable for the Convention to have made that clear instead of imposing the principle of continuity as a general rule. His comments were not intended as a criticism of the Convention, but the legal implications of the solution adopted in the Convention were so far-reaching that the Swiss Government would have to study them very thoroughly before it could sign and ratify the Convention.

He noted that Switzerland did not have the status of either predecessor or successor State; by virtue of its links with the outside world, its position was typically that of a third State and it consequently attached more importance than many other States to continuity in treaty relations. It hoped, therefore, that the rule of continuity would continue to be the solution of the future, but that it would be based on consent, in keeping with the policy which the Swiss Government had followed to its own satisfaction and to that of third countries during the period of decolonization, and which had been reflected in the acceptance of declarations of continuity by new States or the negotiation of continuity agreements.

He concluded by stating that the Swiss delegation had striven for juridical exactitude during the work of drafting the Convention and that the positions it had espoused in submitting proposals itself or in supporting proposals put forward by other delegations had been motivated entirely, to the exclusion of all other considerations, by its concern to ensure such exactitude.

Mr. MAKAREVICH (Ukrainian Soviet Socialist Republic) said that the unflagging efforts of the International Law Commission had now been crowned by the adoption of a Convention which represented a resounding success both for the Commission and for all States Members of the United Nations which strove for the progressive development of international law and contributed to the struggle against colonialism and imperialism. His delegation congratulated the Commission on the fact that its draft, after thorough consideration, had been adopted with very few changes. The Conference had codified the basic elements of existing international law and had contributed to the progressive development of international law. International treaties, which were the instruments of peaceful relations between States, should enable States to work for peace on the basis of justice and equality. Those were in fact the two criteria underpinning the Convention, which was associated with the principles of self-determination, of the permanent sovereignty of States over their natural resources and of the right of States freely to choose their policies and to conduct their relations, particularly treaty relations, with other States.

The Convention would enable States to use multilateral treaties to better advantage in the interests of the development of international law and of world peace and security. The Convention contained a number of provisions based on recognized rules of international law, such as the inviolability of frontiers, and the rule of continuity, which reflected contemporary reality so far as succession of States was concerned. The reinforcement of those principles by codification would make it possible for States to strive for world peace and security and to improve international relations on the basis of respect for third States and for the freedom of all peoples.

His delegation welcomed the provisions on the settlement of disputes, which showed that most States had not been in favour of adopting a compulsory procedure, and considered that the article adopted on the question went as far as it was possible to go at the present stage.

Mr. MARESCA (Italy) said that his delegation had voted in favour of the Convention, since it met a need within the legal order. The process of decolonization had given new life to the legal régime of the succession of States and had thus made it necessary to vest that régime with the legal certainty of written rules. The Convention on Succession of States in respect of Treaties was the natural and necessary sequel to the Convention on the Law of Treaties, which had left a gap. The two Conventions combined in defining the law of treaties. The main feature of the Convention just adopted by the Conference was the equitable balance which it struck between two different and even contradictory principles, that of the "clean slate" and that of continuity. The former principle concerned newly independent States, while the latter applied to everything that was still rooted in past realities. His delegation fully appreciated the reference in the preamble to customary law, which filled unavoidable gaps and clarified points that might otherwise remain obscure.

It was naturally impossible for the Convention to satisfy all the delegations which had had to make sacrifices. His delegation, for instance, would have liked the Conference to adopt more far-reaching rules, but had had to agree to a compromise; it would have welcomed the establishment of a comprehensive procedure for the settlement of disputes, in other words, one which made provision for recourse to the International Court of Justice. Nevertheless, the provisions which had been adopted or that subject and included in the body of the Convention were preferable to the Protocols adopted in the past.

He was glad to see that the Convention would bear the name of Vienna, thus continuing a long-standing tradition dating back to the Congress of Vienna of 1815, which had laid down rules that were still in force. He concluded by expressing the hope that other Conventions would also see the light of day in Vienna, the capital of international law.

Mr. NAKAGAWA (Japan) said that, despite the reservations which his delegation had expressed in regard to certain provisions, it considered that the Convention as a whole contributed to the progressive development and codification of international law and had therefore voted in favour of its adoption.

Mr. DOGAN (Turkey) said he regretted that he had been unable to associate his delegation with the great majority of delegations which had voted in favour of the text of the Convention as a whole. He hoped, however, that the Turkish Government would eventually be able to overcome the legal and administrative difficulties created for it by certain provisions, particularly those of article 33 and article 2.

Mr. ABOU-ALI (Egypt) said that he had voted in favour of the Convention because, in his opinion, it marked further progress in the codification and progressive development of international law and it struck a proper balance between the two principles on which international relations were founded - the "clean slate" principle and the principle of continuity.

Mr. ARIFF (Malaysia) said that, he too, had voted in favour of the Convention, because he considered it very useful. He thanked the Austrian Government for its welcome and, in addition, all those who had enabled the Conference to achieve its purpose.

Mr. PERE (France) thanked all those who had contributed to the success of the Conference and expressed his gratitude for the welcome extended to the participants by the people of Austria and the city of Vienna.

His delegation had, with great regret, abstained during the vote on the Convention. From the outset his Government had questioned the advisability and feasibility of codifying in the form of a convention such a delicate matter as succession of States in respect of treaties. Nevertheless, heeding the legitimate concerns of the developing and the newly independent countries, it had agreed to contribute to the Conference and to provide it with its juridical and practical experience. Unfortunately, his delegation had, for purely juridical reasons, been unable to agree to certain provisions of the text of the Convention, particularly

articles 2, 12 bis, 33 and 34 and some of the final clauses, and it had therefore been unable to vote in favour of the Convention.

However, its attitude towards the Convention would not of course prevent his Government from considering with an open mind and with understanding any cases of succession of States in which it might be involved.

Draft resolutions submitted directly to the plenary Conference

Tribute to the Special Rapporteurs and the Expert Consultant (A/CONF.80/L.2)

Draft resolution A/CONF.80/L.2 was adopted by acclamation.

Tribute to the International Law Commission (A/CONF.80/L.3)

Draft resolution A/CONF.80/L.3 was adopted by acclamation.

Tribute to the people and to the Federal Government of Austria (A/CONF.80/L.4)

Draft resolution A/CONF.80/L.4 was adopted by acclamation.

Mr. HERNDL (Austria) thanked the sponsors of draft resolution A/CONF.80/L.4 and the States that they represented. The Austrian Government was proud to have acted as host to the Conference in Vienna and took pleasure in the climate of understanding which had marked its work throughout. He expressed his gratitude to delegations and to the Secretariat for contributing so much to the success of the Conference.

Adoption of the Final Act of the Conference (A/CONF.80/26)

Mr. YASSEEN (Chairman of the Drafting Committee) said that in paragraph 25 of the document on methods of work and procedures adopted by the Conference that might be applicable to its resumed session (A/CONF.80/17), of which the Conference had taken note at its 10th meeting, on 31 July 1978, it had been suggested that the preparation of the Final Act of the Conference could be left to the Drafting Committee. At its 24th meeting, on 21 August 1978, the Drafting Committee had adopted the draft Final Act, which was now before the Conference in document A/CONF.80/26.

The document described in chronological fashion, the background to and work of the Conference, with a brief indication of its structure and methods of work and a list of the States which had participated in the Conference and of those which had been represented by observers. It also mentioned the United Nations Council for Namibia and the international organizations and other bodies represented at the Conference. Lastly, it indicated the membership and the titles of the subsidiary organs established by the Conference and the names of the officers of the Conference and of its organs. Naturally, it emphasized the outcome

of the endeavours of the Conference, in other words, the adoption of the Vienna Convention on Succession of States in respect of Treaties.

The Final Act, to which the resolutions adopted by the Conference were annexed, could be signed by the representatives of the States participating in the Conference at the same time as the Convention, on the day on which the latter was opened for signature.

The Final Act of the Conference was adopted.

Sir Ian SINCLAIR (United Kingdom), speaking on behalf of the Group of Western European and Other States, expressed gratitude to the President of the Conference, to the Chairman of the Committee of the Whole and also its Vice-Chairman, who had presided over the Informal Consultations Group, and to the Rapporteur and the members of the Secretariat. He paid a tribute to the International Law Commission, which could claim to have furthered the Convention, and thanked the Austrian Government for its generous hospitality.

Mr. GIL-MASSA (Mexico), speaking on behalf of the Latin American Group, said that he had voted in favour of the Convention, which he considered to be a useful instrument in the codification and progressive development of international law. He congratulated the President of the Conference, who had enabled the Conference to bring to a successful conclusion work that had often proved difficult, and also thanked the Chairman of the Committee of the Whole, the other officers and the Expert Consultant and the Secretariat. He also paid a tribute to the International Law Commission and thanked the Austrian Government for its welcome.

Mrs. SLAMOVA (Czechoslovakia), speaking on behalf of the Group of Eastern European States, said that she, too, wished to congratulate the President of the Conference and the officers of the Committee of the Whole. The Conference could not have been successful in its work without the excellent draft prepared by the International Law Commission; she thanked all members of the Commission, especially those who had participated in the Conference. Owing to the endeavours of the Drafting Committee and of the informal consultations group, and to the spirit of co-operation which had prevailed, the Conference had been able to carry out an extremely complex task and to adopt an excellent Convention which she hoped would be acceptable to all States.

Mr. YACOUBA (Niger), speaking on behalf of the African Group, associated himself with the tributes voiced by the representatives of the other

regional groups. He took pleasure in the success of the Conference, to which the African Group had contributed by the positive attitude which it had displayed throughout what had sometimes been difficult discussions. The Convention marked an important stage in the efforts to achieve a more equitable and more humane codification of international law, since it enabled the newly independent States to free themselves from any liability deriving from commitments into which they had not themselves entered. He wished to commend the International Law Commission and to express his gratitude to the people and the Government of Austria for their hospitality.

Mr. SETTE CÂMARA (Brazil), speaking as Chairman of the International Law Commission, thanked the Conference for having adopted a resolution that paid a tribute to the Commission. He expressed appreciation to Sir Humphrey Waldock, the previous Special Rapporteur, and went on to point out that once again the International Law Commission had demonstrated the excellence of its methods of work, since the Conference had adopted most of the proposals in the basic text and had departed from it simply to add provisions that the Commission had not had the opportunity to consider, such as the provisions on the settlement of disputes.

The PRESIDENT thanked delegations for their kind words in his regard. He expressed his gratitude to the participants in the Conference and to the officials of the Secretariat, who had been the architects of the success of the Conference.

The meeting rose at 5.30 p.m.

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On 23 August 1978, before the signature of the Final Act, the delegations of Spain and Turkey informed the Secretariat that they were now authorized to approve the Convention.